TAX LAW

RECENT PROPOSED AMENDMENTS TO THE INCOME TAX ACT 1967

Published on 23rd April 2024

INTRODUCTION

The Income Tax (Amendment) Bill 2024 ("**Amending Bill**") was tabled for its first and second reading in the Dewan Rakyat on the 25th March 2024 and was subsequently passed therein without any amendment on the 26th March 2024. The Amending Bill is now pending scrutiny of the Dewan Negara before being given the Royal Assent and for the same to be gazetted and expected to come into force to effect various amendments to the existing *Income Tax Act 1967 (Revised 1971)* ("**ITA 1967**").

It was widely reported in the Press that the Amending Bill will not involve any additional expenditure to the government. Furthermore, the Finance Minister II, Datuk Seri Amir Hamzah Azizan, was quoted saying during the reading of the Amending Bill in the Dewan Rakyat that the Amending Bill is important for the Nation's economic landscape and fostering a conducive environment for businesses. The Deputy Finance Minister Lim Hui Ying also said that the amendments, especially on capital gains tax, are to ensure that tax practice in Malaysia aligns with international best practices.

KEY AMENDMENTS

The Amending Bill touches mainly on 3 aspects, which are on capital gains tax, e-invoicing and the revision of estimate of tax payable.

1. **Capital Gains Tax (Definition of "Capital Asset")**
   a. **Section 2 ITA 1967**: The definition of "capital asset" under section 2 of ITA 1967 which currently covers movable or immovable property including any rights or interests thereof without any mention of the location of the asset is proposed to be amended to 2 categories; (1) movable or immovable property situated outside Malaysia including any rights or interests thereof and (2) movable property situated in Malaysia which constitutes a share of a company incorporated in Malaysia which is not listed on the stock exchange (including any rights or interests thereof) owned by a company, limited liability partnership, trust body or co-operative society.

      Implication: The proposed amendment appears to restrict and provide more clarity as to the properties which may be covered within the definition of capital asset for the purpose of imposition of capital gains tax under the Act.

      Effective date: Coming into operation of the Act.

b. **Paragraph 8(a), Part XXI, First Schedule of ITA 1967**: Pursuant to the abovementioned proposed amendment on the definition of "capital asset", the provision on the rate of income tax chargeable for disposal of capital assets situated in Malaysia and acquired before 1 January 2024 is also proposed to be amended. This is done in line with the definition of capital assets in section 2 on the second category, in which the taxation rate applicable will be either (1) 10% of the chargeable income or (2) 2% of the gross disposal price.

   Effective date: Coming into operation of the Act.

c. **Paragraph 8(b), Part XXI, First Schedule of ITA 1967:** Likewise, the provision on disposal of capital assets situated in Malaysia and acquired on or after 1 January 2024 is also proposed to be amended. This is in line with the definition of capital assets in section 2 on the second category, in which the applicable taxation rate will be 10% of the chargeable income from the disposal of capital assets.

   Effective date: Coming into operation of the Act.

2. **Capital Gains Tax (Disposal Involving Capital Asset Deriving Value from Local Real Property)**
   a. **Section 15C(1) of the ITA 1967**: The current provision replaces the word "person" as being the chargeable entity in the disposal of the capital assets of a foreign company. The Amending Bill proposes for it to be substituted with the terms "company, limited liability partnership, trust body or co-operative society".
   Implication: The proposed amendment will restrict taxation for disposal of capital assets under section 15C(1) of the Act to those made by a company, limited liability partnership, trust body or co-operative society.

   Effective date: Coming into operation of the Act.

   b. **Section 15C(5) of the ITA 1967:** The current provision is proposed to be amended to the effect that the definition of "defined value" is clarified to mean the market value of real property or the acquisition price of shares of another controlled company as determined under section 15C(4) of the Act.

   Effective date: Coming into operation of the Act.

3. **Capital Gains Tax (Applicability of Definition of "Shares")**
   Section 65C of the ITA 1967: The Amending Bill proposes to remove the definition of "shares" therein to the effect that the definition of "shares" in section 2(1) of the Act will be applicable for Chapter 9 of Part III of the Act on disposal of capital assets.

   Effective date: Coming into operation of the Act.

4. **E-Invoicing**
   a. **Section 82(2B) of the ITA 1967**: The Amending Bill proposes to remove the word "printed" from "receipt" to enable businesses that issue consolidated e-invoices to issue receipts in any manner and not limited to printed receipts. Under the current framework of law, businesses which issue consolidated e-invoices will have to issue a printed receipt for every goods sold or services performed to the customers. This also enables businesses to be more environmentally friendly as a printed receipt need not be issued.

   Implication: The proposed amendment will enable receipts to be issued in any manner.

   Effective date: Deemed on 1st January 2024.

b. **Section 82C of the ITA 1967**: The Amending Bill also proposes extending the requirement to issue a self-billed invoice towards "electronic commerce platform provider" aside from a person who acquires any goods sold or enjoys any services performed.

   Effective date: Deemed on 1st January 2024.

5. <u>**Revision of Estimate of Tax Payable**</u>
   Section 107C(12) of ITA 1967: The Amending Bill proposes to include in the definition of "revised estimate" for the purpose of estimate of tax payable, the revised estimate made in the eleventh month of the basis period, and in the absence of that, the one in the ninth month and in the absence of that, the one in the sixth month.

   Effective date: Bears effect for the year of assessment 2024 and subsequent years.

<u>KEY TAKEAWAYS</u>

1. Chargeable income from capital asset disposal will only cover immovable and moveable property if the same is situated outside Malaysia.
2. With regard to property situated in Malaysia, chargeable income from capital asset disposal only covers shares of unlisted companies (including any rights or interests thereof) owned by a company, limited liability partnership, trust body or co-operative society. Disposal of shares of listed companies are excluded from taxation.
3. Chargeable person under section 15C of ITA 1967 will be limited to a company, limited liability partnership, trust body or co-operative society.
4. Businesses which are required to issue consolidated e-invoice to the Director General of Inland Revenue will be able to issue receipts in any manner to customers and not required to issue printed receipts.
5. Electronic commerce platform providers will have to issue self-billed invoices.
6. Revised estimate for tax payable will be based firstly on the one made in the eleventh month of the basis period, before moving to the ninth and subsequently the sixth month.

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